

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS CREIGHTON SHRADER,

Petitioner,

v.

M. ARVIZA,

Respondent.

Case No: 1:21-cv-01229-AWI-BAK(SKO)-HC
ORDER DENYING PETITIONER'S MOTION
TO VACATE ORDER REFILEING PETITION

[Doc. 18]

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On August 12, 2021, Petitioner filed a petition for writ of mandamus in this case. The Court interpreted the petition as challenging a state sentence and dismissed the petition. (Docs. 5, 8.) Petitioner appealed. On April 14, 2022, the Ninth Circuit vacated the judgment because the Court had misinterpreted Petitioner's claim and remanded the case to provide Petitioner an opportunity to properly raise his claim in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On May 3, 2022, Petitioner filed his petition pursuant to 28 U.S.C. § 2241 per the Ninth Circuit's order of remand. The petition was not filed in this case, as it should have been; instead, a new case was opened. See Shrader v. Arviza, 1:22-cv-00528-SAB-HC. Magistrate Judge Stanley Boone thereafter issued an order directing Respondent to file a response. (Id., Doc. 4.)

1 On July 1, 2022, Respondent moved for an extension of time to file a response to the petition
2 because necessary documents from the court and U.S. Attorney's Office in the Southern District
3 of West Virginia had not yet been received. (*Id.*, Doc. 7.) Respondent indicated that Petitioner
4 had filed his § 2241 petition as permitted by the Ninth Circuit in the appeal of the instant case.
5 To correct the apparent misfiling, on July 6, 2022, Magistrate Judge Boone directed the Clerk of
6 Court to administratively close Case No. 1:22-cv-00528-SAB-HC, and to refile Petitioner's §
7 2241 petition in this case. (Doc. 16.) The Court also granted Respondent an extension of time
8 until August 30, 2022, to file a response to the petition.

9 On July 18, 2022, Petitioner filed the instant motion. (Doc. 18.) Petitioner seeks to undo
10 Magistrate Judge Boone's order administratively closing Case No. 1:22-cv-00528-SAB-HC, and
11 to proceed with this petition in that case. Petitioner claims he is being defrauded of his right to
12 file his § 2241 petition, and the Court's order is in contempt of the Ninth Circuit's order. It
13 appears Petitioner is concerned that his § 2241 petition will not be considered and that the Court
14 will proceed instead on his petition for writ of mandamus. That is not the case. The petition for
15 writ of mandamus has been superseded by his § 2241 petition, and the § 2241 petition is now the
16 operative pleading in this case. Respondent has been directed to file a response to the petition,
17 and a response is currently due on August 30, 2022. The Court understands Petitioner's
18 concerns¹, given the procedural history of this case, but the errors have now been corrected and
19 the matter is moving forward on his § 2241 petition, as was ordered by the Ninth Circuit.

20 Accordingly, Petitioner's motion to vacate is DENIED.

21
22 IT IS SO ORDERED.

23 Dated: July 19, 2022

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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25
26 ¹ Petitioner may also be concerned about the changed initials in the case number. To clarify, initially, the
27 case was assigned to then-Magistrate Judge Jennifer L. Thurston ("JLT"). Judge Thurston has since been
28 elevated to District Judge. The case is now temporarily assigned to the undersigned pending Judge
Thurston's replacement. Thus, the case number has changed from 1:21-cv-01229-AWI-JLT-HC to 1:21-
cv-01229-AWI-BAK(SKO)-HC.